

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SINAI HOSPITAL OF BALTIMORE, INC.  
d/b/a VSP

Employer

and

Case 05-RC-244319

1199 SEIU UNITED HEALTHCARE  
WORKERS EAST  
Petitioner

ORDER

The Employer's Request for Review of the Acting Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.<sup>1</sup> The Employer's request for a stay is denied as moot.

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<sup>1</sup> In denying review of the Acting Regional Director's determination that the petitioned-for janitors do not have a "primarily rehabilitative" relationship with the Employer, and therefore constitute statutory employees, we rely additionally on *Davis Memorial Goodwill Industries*, 318 NLRB 1044 (1995), enf. denied 108 F.3d 406 (D.C. Cir. 1997), and *Lighthouse for the Blind of Houston*, 244 NLRB 1144, 1147 (1979), enfd. 696 F.2d 399 (5th Cir. 1983). In addition, we find the Employer's discipline/discharge practices and lack of placement of disabled janitors into outside employment, as described below, to be particularly compelling evidence that the Employer does not have a primarily rehabilitative relationship with the disabled janitors.

Regarding discipline/discharge, although the record suggests that the Employer oftentimes initially attempts to informally counsel disabled (and nondisabled) janitors for problematic behavior or work performance, the Employer has also formally disciplined and, in some instances, discharged disabled janitors for a number of infractions, including punctuality issues, attendance issues, hygiene issues, inappropriate behavior, and unsatisfactory performance of job duties, as well as for taking unauthorized breaks, failing to put supplies away, and falling asleep on the job. The Employer does not refer individuals who demonstrate unsatisfactory job performance or problematic behavior for additional training or attempt to reassign them to different positions; instead, the Employer discharges those individuals and designates them as ineligible for rehire. Further, the Employer has discharged disabled janitors during their mandatory probationary periods.

Regarding job placement, the Employer does not employ any job-placement counselors or maintain a formal job-placement program, and, in the five years prior to the hearing, the Employer had helped transition only a small number of disabled janitors into outside employment. This is especially significant compared to the number of disabled janitors that it had discharged during that period.

JOHN F. RING,

CHAIRMAN

MARVIN E. KAPLAN,

MEMBER

WILLIAM J. EMANUEL,

MEMBER

Dated, Washington, D.C., May 27, 2020.